

EAST BATON ROUGE PARISH C-377713
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Deputy Clerk of Court

DONALD W. ABSHIRE, ET AL. 19TH JUDICIAL DISTRICT COURT
-versus- CIV. ACTION NO. 377713, SEC. 26
THE STATE OF LOUISIANA, ET AL. EAST BATON ROUGE PARISH,

CONSOLIDATED WITH

ARTHUR A. LEWIS, ET AL. 19TH JUDICIAL DISTRICT COURT
-versus- CIV. ACTION NO. 412265, SEC. 26
THE STATE OF LOUISIANA, ET AL. EAST BATON ROUGE PARISH,

**ORDER PRELIMINARILY APPROVING MOVANTS' MOTION BY ALL PARTIES
FOR PRELIMINARY APPROVAL OF SETTLEMENT
AGREEMENT AND ISSURANCE OF OTHER RELATED ORDERS**

Upon review and consideration of the Settlement Agreement, dated the 13th day of December, 2018, and the Motion by All Parties for Preliminary Approval of Settlement Agreement and Issuance of Other Related Orders, including approval of Form of Notice, and setting of Final Settlement Hearing, and their incorporated brief in support of that motion, **IT IS HEREBY ORDERED, ADJUDGED and DECREED** as follows:

1. This Court has jurisdiction over this action and each of the parties.
2. The Court finds that, upon review of the record, the proposed settlement, which includes the following cash payments to the Court-appointed Claims Administrator, Rust Consulting, for the benefit of the Class in exchange for, *inter alia*, dismissal of the litigation with prejudice and certain releases of claims by Plaintiffs as set forth in the Settlement Agreement, was entered into at arm's length by highly experienced counsel after over twenty-six years of litigation and is fair, reasonable, and adequate and in the best interests of the Class, and falls within the range that responsible and experienced attorneys could accept considering all relevant risks and factors of litigation, and is hereby preliminarily approved:

A. Three million and three hundred thousand dollars and no/100 (\$3,300,000.00) to be paid collectively by the State of Louisiana, upon approval by the Litigation Subcommittee of the Joint Legislative Committee on the Budget ("JLCB")

B. Six hundred thousand dollars and no/100 (\$600,000.00) to be paid by Admiral Insurance Company.

C. Three hundred and sixty thousand dollars and no/100 (\$360,000.00) to be paid by Westchester Fire Insurance Company.

D. One million and four hundred thousand dollars and no/100 (\$1,400,000.00) to be paid collectively by Lexington Insurance Company and National Union Fire Insurance Company of Pittsburgh, Pa.

E. One hundred and fifty thousand dollars and no/100 (\$150,000.00) to be paid by American Excess Insurance Association and its members.

3. In accordance with the terms of the Settlement Agreement, the settlement amounts set forth above shall be deposited with the claims administrator, Rust Consulting, who shall invest and reinvest the settlement amounts and any interest accrued thereon after deposit (the "Settlement Fund") in United States Treasury Bills or other similar United States government obligations or federally insured bank certificates of deposit. Rust Consulting shall ensure that the Settlement Fund is treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1 and that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. Rust Consulting shall disburse funds only pursuant to and consistent with the express terms of the Settlement Agreement and as expressly authorized by order of this Court.

4. The proposed form of notices to the Class of the proposed settlement (the "Notice") and the proposed methods of dissemination thereof (first-class mail and publication) satisfy the requirements of Louisiana Code of Civil Procedure 594(A)(2) and due process, are otherwise fair and reasonable, and are therefore approved. Allocation and distribution of the settlement fund among the Class members who submit valid claims *pro rata* based on the net value of the instruments at issue in the litigation is fair and reasonable. Within ten (10) days of notice to Plaintiffs by the State Defendants of approval of the settlement by the Litigation Subcommittee of the Louisiana Joint Legislative Committee on the Budget, Class Counsel shall cause the settlement notices, substantially in the form attached as Exhibits 2 and 3 to Movers' motion, to be disseminated as set forth in Paragraph 13 of said motion. The Proof of Claim, which will accompany the mailed notice, is also hereby approved. The deadline for submission of the Proof of Claim form to the Claims Administrator shall be no less than sixty (60) days from the date of the mailing of the settlement notice to submit claim forms. Rust Consulting as

Claims Administrator shall be responsible for accepting and maintaining documents sent from Class members, including claim forms and other documents relating to claims administration. The accounting firm of AsherMeyers, LLC is authorized to make preliminary valuations of the instruments at issue in the litigation for the purposes of Settlement Fund allocation, which valuations shall be included with the mailed notice and made available for inspection during the notice period at the offices of Class Counsel and on an internet website as provided in the notices attached as Exhibits 2 and 3. Plaintiffs' counsel may seek Court approval for reimbursement from the Settlement Fund for all expenses incurred in connection with the dissemination/publication of the Settlement Notice and claims administration.

5. All briefs and materials in support of the motion for final approval of the Agreement and any motion for attorneys' fees and/or reimbursement of litigation expenses, shall be filed with the Court on or before March 14, 2019.

6. Persons or entities wishing to object to the proposed settlement, request for attorneys' fees, request for reimbursement of litigation expenses, and/or otherwise wishing to be heard at the Fairness Hearing shall, on or before March 29, 2019, send via first-class mail postage pre-paid to the Office of the Clerk of this Court a notice of intention to appear and a summary statement outlining the position(s) to be asserted and the grounds therefore, together with any copies of any supporting papers or briefs, with copies to the following counsel:

On behalf of Class Counsel, Plaintiffs and the Class:

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On behalf of Defendant the State of Louisiana, through the Department of Insurance and the Office of Risk Management:

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Susan N. Eccles

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On behalf of Defendant the State of Louisiana, through the Office of Financial Institutions:

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On behalf of Defendant Admiral Insurance Company:

Michael J. Vondenstein
Hailey, McNamara, Hall, Larmann & Papale, LLP
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On behalf of Defendant Lexington Insurance Company:

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On behalf of Defendant National Union Fire Insurance Company of Pittsburgh, Pa.:

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On behalf of Defendant Westchester Fire Insurance Company:

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On behalf of Defendant AEIA:

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7. Except as provided herein, no person or entity shall be entitled to contest the terms and conditions of the settlement, and persons who fail to object as provided herein shall be deemed to have waived and shall forever be foreclosed from raising any such objections.

8. All briefs and materials responding to any objections submitted by Class Members objecting to the proposed settlement must be filed on or before April 15, 2019.

9. A hearing on final approval (the "Fairness Hearing") is hereby set for April 29, 2019, at 9:30 a.m. (central time) for the purpose of considering, *inter alia*, whether the proposed settlement is fair, reasonable and adequate and should be approved by the Court.

10. In the event the Settlement is terminated as to any Defendant in accordance with applicable provisions of the Settlement Agreement, or in the event the Settlement Agreement otherwise does not become final as to any Defendant, then the Settlement Agreement, the settlement, and all related proceedings shall, except as expressly provided to the contrary in the Settlement Agreement, become null and void and shall have no further force and effect only as to that Defendant, and Plaintiffs shall retain full rights to assert any and all causes of action against that Defendant and any other released party, and that Defendant and any other released parties shall retain any and all rights, defenses, and counterclaims. In such a case, with respect to that Defendant only, these actions shall thereupon revert forthwith to their respective procedural and substantive status prior to the date of execution of the Agreement and shall proceed as if the Agreement and all other related orders and papers had not been executed.

11. The Agreement and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or any liability or wrongdoing by any Defendant, or admission of coverage by any Insurance Defendant, or an acknowledgement of defenses by the Plaintiffs, or the truth of any of the claims or allegations contained in the Plaintiffs' petitions or any other pleading, or the standing of any party to assert claims against any Defendant or defenses against the Plaintiffs, and evidence thereof shall not be discoverable or used directly or indirectly, by any party or any third party, in any way, whether in this action or in any other action or proceeding.

SO ORDERED this 27 day of December, 2018.



Hon. Richard "Chip" Moore
19th Judicial District Court

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF
THE WRITTEN REASONS FOR JUDGMENT /
JUDGMENT / ORDER / COMMISSIONER'S
RECOMMENDATION WAS MAILED BY ME WITH
SUFFICIENT POSTAGE AFFIXED.
SEE ATTACHED LETTER FOR LIST OF RECIPIENTS.

DONE AND MAILED ON January 09, 2019

Kathy W. Spangler
DEPUTY CLERK OF COURT